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method of study could not fail of the happiest effect. For in the decorative arts color is the main element, and practical acquaintance with its management can hardly be begun too soon. It is also, so to speak, beyond all others, an eminently artistic element,—one whose use would tend, it would seem, more than any one thing, to stimulate and develop what genius of artistic power might be at hand,—special capacities which, on the other hand, a too long continued course of black and white might in many cases stifle and destroy.

The illustrations of Mr. Smith's book are most of them pertinent and interesting, but they are so executed as not to enhance its beauty. The style of lettering on most of the architectural drawings combines with their imperfect execution to render a good part of the descriptive inscriptions quite unintelligible.

The Appendix, which covers fifty pages, is mostly taken up with statistical information elsewhere difficult to obtain, in regard to the equipment of art schools, with lists of the most approved models and casts, giving their cost and the cost of their transportation to this country. It cannot but be of the greatest practical value to all persons engaged in these undertakings.

6. — *Memoir of Roger Brooke Taney, LL. D., Chief Justice of the Supreme Court of the United States.* By SAMUEL TYLER, LL. D., of the Maryland Bar. Baltimore: Published by John Murphy & Co., 182 Baltimore Street. 1872.

It was the fortune of Chief Justice Taney on two conspicuous occasions to incur the bitter hate of a powerful political party. His course in accepting the control of the Treasury Department at the request of General Jackson, for the sole purpose of recovering the government deposits from the Bank of the United States after Mr. Duane's refusal to do so, exposed him to charges of subserviency to the President most difficult for an honorable man to bear; and his nomination to the vacancy left by the death of Marshall, coming so soon after this service, was regarded as the thirty pieces of silver which rewarded his baseness, and encountered the fiercest opposition in the Senate. Taking his seat under these circumstances, he had succeeded in living down the accusations against him, and even his opponents had learned to recognize his fitness for his place, when the Dred Scott decision came, at a time when party lines were sharply drawn on the question of slavery, to decide that question against the party of freedom, whose triumph seemed almost assured. Amid the storm of indignation which this decision aroused

among the Republicans, whose great purpose was declared unconstitutional, the circumstances of his original appointment were recalled, and the forgotten charges against him repeated by men who did not care to understand the merits of the controversy in which they originated, but were willing to believe anything that tended to shake the authority of the court which had volunteered to decide against them. As a consequence, his true character and motives have been lost under a cloud of misrepresentation, and his death was hailed by many as a deliverance from a magistrate whose obstinate longevity seemed merely an evidence of his spite. He lived, they thought, simply to keep a Republican from succeeding to his power, and they doubtless fancied that his sharpest pang in death arose from disappointment at finding his strength unequal to his malice. He has been regarded as a man who was originally appointed to his place, not from any fitness for its duties, but simply because General Jackson had found him a "pliant instrument" (to use Mr. Webster's phrase), and wished to repay his servility, and whom the Democratic party found an equally subservient ally, whenever a decision of the Supreme Court was necessary to stamp with authority their political principles, — a judge, in short, who was appointed as a politician, and who felt it his duty to serve in that capacity. It was eminently desirable, therefore, that his biography should be written, not only to exhibit his character in its true light before his countrymen, but also to increase the authority of the tribunal over which he presided, which has suffered in public esteem from the unmerited aspersions cast upon its chief.

Mr. Tyler, however, has given us a panegyric, not a biography. In his desire to relieve the memory of Chief Justice Taney from undeserved obloquy, he has fallen into the opposite error of indiscriminate eulogy. In his vocabulary are none but superlatives. Assuming as a motto for his book, "*Qui nihil in vita nisi laudandum, aut fecit, aut dixit, aut sensit,*" he has sought to prove it literally true. For example, when Mr. Taney was appointed Chief Justice, he tells us that he was called to preside over "the most august tribunal ever established among men," and proceeds: "No man ever realized more entirely the grandeur of high judicial functions and felt more profoundly its responsibilities, and never did a man bring to the discharge of duty a more sublime moral courage. As to his qualifications as a lawyer for the office, they were the most complete. He had not only mastered every branch of legal learning in every form of judicial tribunal, from the highest to the lowest, but he was extraordinarily familiar with practice in every species of court. No matter from what court, whether on the law or the equity side, a record came up on writ of error or appeal, he could

see at once its full import, and his long and diversified experience as a practising lawyer in courts of original jurisdiction had made him as familiar with rules of practice as the most experienced clerk of a court. He was marshalled to his place by a divine tactic " ("and heaven it knoweth what that may mean") "for the good of his country, if ever a public functionary was, just as his great predecessor had been." Such language reminds us of Leicester's prayer in "The Critic," and for exhaustive compliment may be recommended as a model. The same exaggeration runs through the whole book. The judges before whom Mr. Taney practised, his associates and opponents at the bar, and his political friends, are all pre-eminent for ability and virtue; and how his political opponents fare at the hands of the author may be inferred from his placing Hamilton among the disciples of Machiavelli, and making the second Adams "happy in his power of mischief," while Mr. Seward's policy of governing the country "by sectional animosities," and Max Müller's "fanatical spleen against negro slavery" alike come in for his condemnation. History has but one side for Mr. Tyler, and he states that without qualification. He is a painter who knows only black and white, and his pictures are innocent of shading.

Still this fault does not seriously impair the value of his work. It is suppression and falsification which make a biography untrustworthy. The author's exaggeration is too patent to deceive, and defeats itself. He has given us the means of forming our own opinion about Mr. Taney, and we are not obliged to accept his conclusions, though we cannot quarrel with his admiration for the late Chief Justice. The volume opens with a fragment of autobiography written in 1854, which carries us as far as Mr. Taney's twenty-fifth year, at which age he began the practice of law at Frederick, Maryland. This, with the few letters which Mr. Tyler has been able to secure, to a student of character would be the most valuable part of the work, and from them he could hardly fail to get an accurate understanding of the man. They show us the Chief Justice as he was, — a man of great simplicity and elevation of character, of perfectly honest purpose, and of unyielding firmness, who never shrank from what he considered his duty, or suffered unworthy considerations to affect his judgment; "a loyal, just, and upright gentleman," in the best sense; in many respects a great man, but, though an able lawyer and an admirable judge, lacking the intellectual breadth which is a necessary element of greatness. The absence of all pettiness in his nature is very striking; he seems singularly magnanimous and unselfish, and it is refreshing to read his life in these days of furious money-getting.

We cannot refrain from quoting the following little note, written on

the forty-sixth anniversary of his marriage, it seems so entirely characteristic : —

“ WASHINGTON, January 7, 1852.

“ I cannot, my dearest wife, suffer the 7th of January to pass without renewing to you the pledges of love which I made to you on the 7th of January, forty-six years ago ; and although I am sensible that in that long period I have done many things that I ought not to have done, and have left undone many things that I ought to have done, yet in constant affection to you I have never wavered, — never being insensible how much I owe to you, — and now pledge to you again a love as true and sincere as that I offered you on the 7th of January, 1806, and shall ever be your affectionate husband,

“ R. B. TANEY.

“ MRS. ANNE TANEY.”

A lawyer of Frederick used to tell an anecdote which illustrates his high sense of honor. Soon after the narrator began to practise, he was employed in an ejectment cause in which Mr. Taney was opposing counsel ; and when the case was called for trial and he was asked by the court if he was ready, he answered yes. Whereupon Mr. Taney told him in a whisper that his locations were all wrong ; and that if he went to trial, he must lose his case, whether the right was with him or not. The young man had his case continued. Such a letter and such a story are worth pages of eulogy.

In no respect has the Chief Justice been more misrepresented than in reference to his position on the slavery question. Many suppose that in the Dred Scott case he decided that the negro had no rights which the white man was bound to respect. This sentence in his opinion, taken out of its connection, has been quoted as if those words were used to express his own view of the negro's true position in the scale of creation, rather than as a statement of an opinion once common, but which he says “ it is difficult at this day to realize.” His own opinion we find expressed in his argument for Mr. Gruber, and that his expressions were sincere is shown by the fact that he emancipated the slaves which he inherited from his father, and continued to aid them afterwards. Mr. Gruber was a Pennsylvania minister, who, having preached an antislavery sermon at a camp-meeting, was indicted for an attempt to incite a slave insurrection. Mr. Taney defended him, and in arguing his right to speak of slavery as he thought, said : “ It is a subject of national concern, and may at all times be freely discussed. . . . A hard necessity, indeed, compels us to endure the evil of slavery for a time. It was imposed upon us by another nation, while we were yet in a state of colonial vassalage. It cannot

be easily or suddenly removed. Yet, while it continues, it is a blot on our national character, and every real lover of freedom confidently hopes that it will be effectually, though it must be gradually, wiped away, and earnestly looks for the means by which this necessary object may be best attained." These were Mr. Taney's views in 1819, and his opinion in the Dred Scott case will be searched in vain for a word inconsistent with them. They were the views of the best men among the founders of our government, and of the most enlightened statesmen who succeeded them; they were the views of Mr. Lincoln himself when he was elected President by the Republican party. With the objects of that party the Chief Justice was in hearty though unconscious sympathy. That he did not readily accept the means by which they proposed to accomplish these objects is not surprising. A Roman Catholic in religion, a lawyer by profession, inclined from early political association as well as from the habit of his mind to construe the Constitution strictly, at a time of life when man's conservative instincts are strongest, it is not strange that he refused to abandon the views of constitutional law which he had spent his life in learning and expounding, for the purpose of adopting new interpretations which had gained currency in the heat of party strife among men who had ceased to venerate a Constitution which they had always heard invoked to protect slavery. Nor can we wonder that, with his stricter ideas, he seemed to men who were bent on its destruction like a defender of the institution, which he too wished to see destroyed, only not at the expense of the Constitution. And now that the object of both has been accomplished in a way which neither could foresee, we may hope that his countrymen will do justice to his motives, and respect the courage which enabled him, in the discharge of what he felt to be his duty, to bear the odium of seeming to side with a wrong which he hated.

Of Mr. Taney's judicial career there is little for a biographer to say. Mr. Tyler tells us that his opinions "for apposite learning, wise legal discrimination, calm judicial spirit, and perspicuity and finish of language are unsurpassed by those of any judge who has ever administered law in a court founded on the common law of England." No one but a lawyer can dispute this estimate, and a lawyer is more likely to form his own opinion of Chief Justice Taney's merits as a judge from reading his opinions himself, than to adopt Mr. Tyler's judgment. In treating this branch of his subject he has undertaken to discuss only his opinions on constitutional questions, dismissing the others with the temperate statement already quoted. He takes the cases up in succession simply to state what was decided in each, and to make them the

pegs on which to hang the praises of his hero. He forgets, however, that these opinions, where they are recognized as law, were the opinions of the court, and hardly gives the eminent men who were Taney's associates credit for their share in the court's decisions, even in cases where the opinion was written by one of them. For instance, he speaks of the decision in the case of the *Genesee Chief*, as if it were his exclusively. "This decision alone," he says, "is sufficient to place the Chief Justice among the greatest of judicial characters." It "illustrates in an especial manner the liberal wisdom of the Chief Justice." Yet the Supreme Court only adopted here doctrines which Judge Story had taught as law at Cambridge twenty years before. Other decisions, which to Mr. Tyler prove the "marvellous power of analysis which enabled him to discern the exact boundary in all the mutual relations of Federal and State sovereignty and jurisdiction," did not meet with equal approval from critics at least as competent. They made Chancellor Kent say, "I have lost my confidence and hopes in the constitutional guardianship and protection of the Supreme Court," and almost drove Judge Story from the bench. A few months before his death, the latter wrote in reference to them: "The doctrines of the Constitution so vital to the country, which in former times received the support of the whole court, no longer maintain their ascendancy. I am the last member now living of the old court, and I cannot consent to remain where I can no longer hope to see those doctrines recognized and enforced. For the future I must be in a dead minority of the court, with the painful alternative of either expressing an open dissent from the opinions of the court, or by silence seeming to acquiesce in them." With these feelings he had determined to resign, but died before he carried his purpose into execution.

As we have said, our author's history of the Chief Justice's judicial career is made up of digested decisions, and complimentary remarks thereon of his own. He gives us only that which every one who has access to the reports may get for himself. There is not wanting, however, the most valuable testimony to Mr. Taney's greatness as a judge in the less conspicuous but by no means less important part of his duties on the bench. We refer to the speech of Mr. B. R. Curtis, made from experience as his associate, at the meeting of the Boston bar after his death. He said: "It is certainly true, and I am happy to be able to bear direct testimony to it, that the surpassing ability of the Chief Justice, and all his great qualities of character and mind, were more fully and constantly exhibited in the consultation-room, while presiding over and assisting the deliberations of his brethren, than the public knew, or can ever justly appreciate. There his dignity, his love of

order, his gentleness, his caution, his accuracy, his discrimination, were of incalculable importance. The real intrinsic character of the tribunal was greatly influenced by them, and always for the better." Alluding to the fact that he wrote comparatively but few opinions, he says: "He was as absolutely free from the slightest trace of vanity and self-conceit as any man I ever knew. He was aware that many of his associates were ambitious of doing this conspicuous part of their joint labor. The preservation of the harmony of the members of the court, and of their good-will to himself, was always in his mind. And I have not the least doubt that these considerations often influenced him to request others to prepare opinions which he could and otherwise would have written."

Such praise from such a source, while it justifies in part Mr. Tyler's panegyrics, might well have superseded them, and it is on such opinions that the reputation of Chief Justice Taney may safely rest. Our author tells us that his "book is designed not only to be a memoir of Chief Justice Taney, but also to show the working of the Federal government." The fulfilment of this design has certainly increased the size of his volume, but it may be questioned whether it has enhanced its value. He justifies himself for uniting his treatise on our constitutional history with the work announced in his title by this course of reasoning: "As Mr. Taney will be seen occupying high posts in the Federal government at important political crises, it is necessary to take a view of the nature and the working of the Federal government in order to judge of the wisdom and patriotism of his conduct in those positions." Mr. Taney's conduct, as an officer of the Federal government, must be judged by his view of the Federal Constitution, and his judgment of the tendency in the working of the government; and whether his view of the Constitution, and his judgment of the tendency in the working of the government, be true or not, can only be tested by the history of the country down to the present time. In order to judge of the nature of the Federal government, we must recur to its origin." Here certainly is a foundation broad enough to sustain a work equal to Mr. Bancroft's, and we can only admire Mr. Tyler's moderation in limiting his to one volume. His view makes Mr. Taney's life only an episode in his own biography, and obliterates the distinction between biography and history. Chief Justice Marshall on one occasion interrupted a prolix lawyer in a tedious statement of elemental principles with the remark, "Mr. A., there are some things which the judges of the Supreme Court of the United States are presumed to know." We wish that some friend had reminded Mr. Tyler of this story while he was writing his sketch of

our history; for that the Constitution was framed by a convention of delegates at Philadelphia in 1787, that it went into operation on the 4th of March, 1789, and that General Washington was the first President, are facts for a knowledge of which he might fairly have given his readers credit. Nor does it seem necessary to quote all the provisions of the Constitution which relate to the judicial power, "in order to show the services which Mr. Taney rendered to his country as Chief Justice." This quotation Mr. Tyler has given, and that not as a quotation, but as a condensed statement of his own, altering some of the original phraseology to make it harmonize with his context, leaving the rest in glaring contrast with the general construction of his page; and so carelessly that by condensing the two last clauses of the second section in article third, he has given the courts of the United States jurisdiction in cases "between citizens of the same State claiming lands under grants of different citizens." Mr. Tyler's views of history are what might be expected from a man who starts with the fundamental proposition that the Cavaliers settled the Southern States, and reaches the conclusion that the antislavery party "was not moved by any regard for the welfare of the negro race, but by hostility to the Southern States." His logic is illustrated by his attempt to argue that the question between the slaveholding and non-slaveholding States was a question of political power, rather than of hostility to slavery, from the fact that while the New England States were opposing the admission of Missouri, some of their citizens were engaged in the slave-trade, and Judge Story was charging grand juries throughout his circuit to indict them. Such opinions and such reasoning naturally lead him to conclude his review of the circumstances which led to the Rebellion with the remark that "no publicist, judging by the practices of nations, can doubt that, in the forum of political ethics, the slave States were justified in their course; and every publicist knows that it is not the party which fires the first shot that is responsible for the war, but the party which makes war necessary." When, however, he adduces as evidence of the revolutionary policy which governed the Republican party, that, "contrary to unbroken usage," they nominated both candidates, Lincoln and Hamlin, from the same side of Mason and Dixon's line, he should have remembered Jackson and Calhoun.

It is only fair to say, however, that while Mr. Tyler's opinions, both of law and history, are colored by his evident sympathy with the slavery party, they are expressed without bitterness. Indeed, he treats the prominent opponents of his views, such as Clay, Adams, and Lincoln, with every disposition, apparently, to do them justice, and the reader will be glad to miss the personal misrepresentation and detraction which we

have grown to expect in the writings of those who hold his ideas. In this respect he has done what the man whose life he writes would have desired. Mr. Seward is an exception. In Mr. Tyler's view he was a bad man, who sought by encouraging sectional animosities to win the Presidency. Even Mr. Seward's admirers, if they will recall his speech on the admission of Kansas, and the indecent attack which he there made on the Supreme Court, and especially on the Chief Justice on account of the Dred Scott decision, will not wonder that any of Mr. Taney's friends should conceive a prejudice against him. Still, however, it is to be regretted that one holding such opinions should be in a position to influence others. Mr. Tyler is a professor in the Columbia Law School at Washington, and we fear that his pupils will imbibe his views without sharing his moderation, and that he and others like him throughout the South are educating the next generation in such a manner as will keep alive the embers of the civil war and defer the establishment of really cordial relations between the North and the South for many years.

The Dred Scott decision affords him opportunity for a long disquisition, devoted particularly to the assertion of Mr. Justice Curtis, that "slavery, being contrary to natural right, is created only by municipal law," which he terms "one of the most extraordinary aberrations from a great fundamental principle of public law to be found in the history of judicial administration." He proves to his own satisfaction, by quotations from Plato, Cicero, and Justinian, that it was created by the law of nations, because it was an old principle of international law that the victor in battle had a right to enslave his prisoners. As well prove that murder is justifiable by the laws of nations, because he had a right to kill them. That a man of intelligence should to-day argue from this obsolete principle that negro slavery, or the right to enslave a man because he is black, was a creation of international law, without seeing that, if it was, it was abolished, with the principle, centuries before the United States was thought of, or if not, that it is lawful in this country to-day because nothing but municipal law has abolished it, and nothing but the power which makes can unmake, is sufficiently strange, but it would be idle seriously to attack such a position. The Dred Scott decision has been overruled by the war, and the questions therein discussed have passed into history. Mr. Tyler might safely have left its defence to rest on the opinion of the Chief Justice, which he pronounces "the most comprehensive and best reasoned politico-judicial opinion ever pronounced by any tribunal." He certainly has not strengthened it. Some years ago one of the ablest judges who took part in the decision was asked by a lawyer precisely

what the court decided. He replied, "If you ask me what the Supreme Court of the United States decided in the case of Dred Scott, I answer, I don't know." Our author thinks he does, but as his opinion on the point is of interest only to the legal antiquary, we forbear to disturb his confidence.

On the whole, Mr. Tyler is to be thanked for his book. We lay it down with a feeling almost of affection for the man whose life he has written, and are glad to think that the highest judicial position in our country was filled so many years by a man whose public and private life alike afford so admirable an example to the profession of which he was the head. The story of such a life is elevating and encouraging, and we can pardon the author much bad logic and much political heresy for the pleasure and profit we have got from its perusal.

7.—*Man in the Past, Present, and Future. A Popular Account of the Results of Recent Scientific Research as regards the Origin, Position, and Prospects of the Human Race.* From the German of DR. L. BÜCHNER, by W. S. DALLAS, F. L. S. London, 1872.

The words "materialist" and "atheist" have been so long employed as death-dealing epithets in the hands of hard-hitting theological controversialists, that it seems hardly kind in us to begin the notice of a meritorious book by saying that it is the work of a materialist and an atheist. We are reassured, however, by the reflection that these are just the titles which the author himself delights in claiming. Dr. Büchner would regard it as a slur upon his mental fitness for philosophizing if we were to refuse him the title of atheist; and "materialism" is the name of that which is as dear to him as "liberty" was dear to the followers of Danton and Mirabeau. Accordingly, in applying these terms to Dr. Büchner, they become divested of their old opprobriousness, and are enabled to discharge the proper function of descriptive epithets by serving as abstract symbols for certain closely allied modes of thinking. Considered in this purely philosophical way, an "atheist" is one to whom the time-honored notion of Deity has become a meaningless and empty notion; and a "materialist" is one who regards the story of the universe as completely and satisfactorily told when it is wholly told in terms of matter and motion, without reference to any ultimate underlying Existence, of which matter and motion are only the phenomenal manifestations. To Dr. Büchner's mind the criticism of the various historic conceptions of godhood has not only stripped these conceptions of their